8

REMARKS

The present amendment is responsive to the Office Action mailed in the above-referenced case on April 14, 2003, made Final, and the Notice of Non-Compliance mailed 8/22/2003. Claims 2-22, 24-34 and 36-38 are standing for examination. Claims 2-22 and 27-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Endo, et al. (U.S. Patent Number 5,764,624), herein after Endo, in view of Moy, et al. (U.S. Patent Number 6,031,817), hereinafter Moy. Claims 24-25 and 36-37 are rejected as being unpatentable over Endo, in view of Moy, and further in view of Ferstenberg, et al. (U.S. Patent Number 5,873,071), hereinafter Ferstenberg. Claims 26 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Endo, in view of Moy, and further in view of Gerszberg, et al. (U.S. Patent Number 6,229,810B1), hereinafter Gerszberg.

Applicant has, again, carefully studied the prior art references cited and applied by the Examiner, and the Examiner's rejections and statements. In response to the Examiner's rejection of the claims, applicant herein amends the claims to more particularly point out that data packets intended for an original destination are inserted into virtual packets and forwarded to an alternate destination. Applicant argues that not all of the limitations of applicant's base claims are suggested in the prior art cited or applied by the Examiner. Applicant points out and argues the key limitations in applicant's claims, as amended, clearly and unarguably distinguishing applicant's claims over the prior art.

The Examiner kindly provided a response to arguments portion of the Office Letter which applicant will now address. The Examiner states that the previous arguments provided by applicant are not persuasive. Applicant presented the argument that portions of Moy, as referenced and relied upon by the Examiner fails to teach or suggest utilizing a "virtual packet" for forwarding

9

data packets through an alternate route or bypass virtual circuit as disclosed and claimed in applicant's invention.

Applicant respectfully points out that the argument against Moy was presented in response to the Examiner's assertion that Endo does not disclose embedding the data in virtual packets addressed for an alternate route. The Examiner continued to argue that Moy discloses embedding the data in virtual packets addressed for the alternate route (figure 5, lines 21-49). Therefore, the Examiner continued, it would have been obvious for one skilled in the art to use the communication link/virtual circuit table as taught by Moy in the system of Endo with the motivation being to re-establish the virtual circuits (col. 10, lines 38-49).

Applicant provided a detailed response argument to Moy in the last response filed, disproving the Examiner's assertion that Moy discloses embedding the data in virtual packets addressed for the alternate route.

In the present Office Letter, under the "Response to Arguments" section, the Examiner states that the Moy secondary reference is used to supplement sufficiently for the primary reference of Endo et al.. Therefore, the primary reference alone can be can be used to reject a virtual packet for forwarding data packets through an alternate route or bypass virtual circuits as in claims 2 and 27.

Applicant strongly argues that it absolutely would not be obvious for one skilled in the art to use the communication link/virtual circuit table as taught by Moy in the system of Endo with the motivation being to re-establish the virtual circuits because neither Moy nor Endo teach or suggest inserting data packets into virtual packets for forwarding on alternate routes between nodes as claimed.

Applicant amended the claims to make it painstakingly clear that, when a designated connection path fails, data packets, defined as each having their own original header as known in the art, are inserted into virtual packets for traveling alternate paths between nodes.

10

Applicant argues that Endo stores alternate data packet header information, and achieves rerouting of data packets <u>by converting the header information of the data packets to be transferred (see header conversion unit 22).</u> In applicant's invention rerouting is achieved by embedding data packets into virtual data packets, forwarding the virtual data packets containing the data packets to be transferred over a virtual alternative output route, and extracting the original data packets to be transferred from the virtual data packet for forwarding to the end destination node.

Applicant points out that that column 10, lines 21-49 of Moy describes Fig. 5 which <u>depicts the communication link/virtual circuit table which has listings associated with each communication link in the network.</u> Specifically, Moy teaches when the switching mode 11n determines that a communication link is malfunctioning, it can determine whether table 48 contains an entry 60p whose communication link identifier field 61 identifies the malfunctioning link 13(p), whether the switch node 11n is associated with any virtual circuits, and if so, <u>update it's various data structures to reflect the fact that those virtual circuits were dropped.</u>

Applicant argues, as clearly shown above, that Moy has absolutely no disclosure of forwarding data over the alternate output route toward the destination node, <u>by embedding the data packets in virtual packets addressed for the alternate route.</u>

Applicant believes that all of the independent claims of applicant's invention, as amended and argued above by applicant are now clearly and unarguably patentable over the prior art presented by the Examiner, either singly or combined, as neither of the references presented by the Examiner disclose, suggest or intimate embedding data to be transferred into virtual packets, and extracting the data from the virtual packets for forwarding to the destination node, as is recited in applicant's independent claims as amended. Depending claims 3-26, 28-34, and 36-38 are then patentable on their own merits, or at least as depended from a patentable claim.

11

As all of the claims standing for examination as amended and argued above by applicant have been shown to be patentable over the art of record, applicant respectfully requests reconsideration and that the present case be passed quickly to issue. If any fees are due beyond fees paid with this amendment, authorization is made to deduct those fees from deposit account 50-0534. If any time extension is needed beyond any extension requested with this amendment, such extension is hereby requested.

Respectfully Submitted,

Ross W. Callon et al.

by_____

Donald R. Boys
Reg. No. 35,074

Donald R. Boys
Central Coast Patent Agency
P.O. Box 187
Aromas, CA 95004
(831) 726-1457